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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,097	07/28/2003	Raymond A. Liberatore	12,534	3525

7590 06/02/2006

Mr. William W. Haefliger
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EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,097

Applicant(s)

LIBERATORE, RAYMOND A.

Examiner

David J. Walczak

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 9-18 and 20-27 is/are pending in the application.
- 4a) Of the above claim(s) 9-14, 20 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 15-18, 21, 22 and 24-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/03 8/05 & 11/05
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election

Applicant's election of Species IV in the reply filed on 4/12/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The Applicant indicates that claims 9-12, 20 and 23 do not read on the elected embodiment. Claims 13 and 14, however, also do not read on the elected embodiment (these claims are directed toward Species III). Accordingly, claims 9-14, 20 and 23 are hereby withdrawn from further consideration and claims 1-6, 15-18, 21, 22 and 24-27 will be examined herein.

Abstract

The abstract of the disclosure filed on 5/6/05 is objected to because phrases that can be implied, such as "is disclosed" should not be present therein. Correction is required. See MPEP § 608.01(b).

Drawings

The drawings are objected to because in Figure 2, there are two leader lines with no reference characters attached thereto. Further, reference character 21 (page 6, line 23) is not present in any of the drawings, in Figure 6, it appears that one of the two reference characters 32 (presumably the one on the left) should be deleted, in Figure

Art Unit: 3751

18, it is unclear as to what elements "A" and "B" are intended to depict and in Figure 20, reference character 17 should be 17a (see page 10, Line 21). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: On page 9, line 20, "110a" should be --110a'--. Appropriate correction is required.

Claim Objections

Claims 4 and 16 are objected to because of the following informalities: On line 3 of claim 4, "a nozzle outlet" should be --the nozzle outlet-- as the nozzle outlet has already been defined in claim 1. On line 3 of claim 16, the word "end" should be inserted after "spreader terminal". Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1-6, 15-18, 21, 22 and 24-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In regard to claim 1 and 27, the specification, with respect to the elected embodiment shown in Figures 19 and 19a, has not enabled a "shelf carried by the dispenser" or a shelf "connected to the dispenser" (currently, "shelf" 110a is carried by the nozzle 112 and not disclosed as being carried by the dispenser 10). It is further noted that, in the interest of clarity, the term "shelf" should be added to the specification when the embodiment of Figures 19 and 19a is being defined (page 8, line 24 through page 10, line 16). Further, the specification, with respect to the elected embodiment, has not enable a device wherein the material is dispensed "over the shelf" (viewing Figures 19 and 19a, the material is dispensed beneath the shelf, or between the shelf and the surface to which the material is being spread. Further in regard to claim 1, the specification, with respect to the elected embodiment, has not

enabled a device having both a shelf and a “protective structure” defined as claimed, i.e., the elected embodiment seems to have a nozzle 112, dispenser 10, spreader 110 and shelf 110a. No “protective structure” that is “carried by the dispenser” has been defined in addition to the above mentioned elements. In regard to claim 2, the specification has not enable a cap having a spreader surface thereon or a spreader surface attached to the dispenser (currently, the spreader surfaces are disclosed as being attached to the nozzles).

Claims 1-6, 15-18, 21, 22 and 24-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claim 1, it is unclear as to whether or not the dispenser is intended to be part of the claimed combination, i.e., in the preamble, it appears that the spreader is not part of the claimed combination but the limitation “a spreader shelf carried by the dispenser” indicates that the dispenser is intended to be part of the claimed combination. Should the Applicant intend to claim the dispenser, a positive antecedent basis for the dispenser should be defined. Should the Applicant not intend to claim the dispenser, --adapted to be-- language should be used when referring thereto. In regard to claims 1 and 27, an antecedent basis for “the aperture” (see, for example, line 16 of claim 27) should be defined. It appears that in both claims 1 and 27, “the aperture” should be --the outlet--.

Claim Rejections - 35 USC § 102

Art Unit: 3751

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 27 is rejected under 35 U.S.C. 102(b) as being anticipated by Henneberry et al. (hereinafter Henneberry). Henneberry discloses a material dispenser 5, 6, a dispensing nozzle 10 associated with the dispenser and a spreader surface 8 associated with the nozzle wherein the surface 8 has the form of a spreader shelf carried by the dispenser and projecting forwardly relative to the nozzle, wherein the shelf 8 is connected to the dispenser and wherein the nozzle defines an outlet such that the outlet and the shelf have lateral widths “substantially in excess of three times the thickness of the outlet” whereby when the material is dispensed through the aperture and over the shelf it becomes spread over a width of the shelf and beyond the shelf. It is noted that the statements of intended use, i.e., “edible and spreadable” material dispenser and “for spreading as a wide layer deposited on an edible” do not lend any patentable structure to the claims. Further, the Henneberry device is capable of spreading an edible material onto an edible.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

Art Unit: 3751

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
5/25/06